

1419064 (Refugee) [2016] AATA 3324 (17 February 2016)

### DECISION RECORD

<b>DIVISION:</b>	Migration & Refugee Division
<b>CASE NUMBER:</b>	1419064
<b>COUNTRY OF REFERENCE:</b>	Pakistan
<b>MEMBER:</b>	Susan Pinto
<b>DATE:</b>	17 February 2016
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 17 February 2016 at 9:26am

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. The applicant is a citizen of Pakistan who is aged in his early [age]. The applicant is from Karachi and is a Sunni Muslim. He was granted a [temporary] visa [in] April 2013 and arrived in Australia on that visa [in] May 2013. He departed Australia [in] July 2013 and returned [in] 2013. He again departed Australia [in] November 2013 and returned [in] January 2014. The applicant had previously travelled to [Country 1], where he had been granted a Student visa, and he had also travelled to [other locations].
2. The applicant applied to the Department of Immigration for the Protection visa [in] April 2014. The applicant essentially claimed that he has been sought by the Taliban due to his refusal to assist them in recruiting young men to join them. The Taliban forced one of the applicant's employees to open a business which was a cover for drugs. The Taliban also wanted the applicant to expand his business and go into business with them, using the business as a front for drugs. The applicant claims that his refusal to do so resulted in threats that he would be killed by the Taliban, resulting in him fleeing to Australia on a [temporary] visa.
3. The delegate refused to grant the visa [in] October 2014. The delegate accepted the applicant's claims regarding his association with the Taliban, but found that he could relocate to another area of Pakistan. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
4. A summary of the relevant law is set out in an attachment to this decision. The issues for the Tribunal's consideration are whether the applicant has a well founded fear of persecution for one or more of the five reasons set out in the Refugees Convention. If the Tribunal is not satisfied that the applicant has a well founded fear of persecution for a Convention reason it must consider whether there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan that there is a real risk that he will suffer significant harm.

### CLAIMS AND EVIDENCE

#### Application to the Department

5. When lodging the application to the Tribunal, the applicant stated that he was born in Karachi. He stated that he speaks, reads and writes Urdu and reads and writes English. He stated that he is unmarried and his siblings, including [a number of siblings], reside in Pakistan. His parents also reside in Pakistan.
6. The applicant provided a copy of his passport to the Department, indicating that he had a visa for [Country 1], issued [in] January 2011 and valid until [February] 2012. The visa indicates that the applicant entered [Country 1] on that visa [in] February 2011.
7. In a statement attached to the application, the applicant referred to various articles regarding attacks against police officers, judges, military, professors and others by the Taliban; the suicide of the person convicted of killing Daniel Pearl; an Amnesty International report on the disappearance of an anti-drone activist; and a report on the United States ordering its diplomats out of Lahore.
8. The applicant stated in his statement that he has a well founded fear of persecution for reasons of his "race, religion, nationality, membership of a particular social group or political

opinion” and “I submit that for the most part they are indistinguishable from each other”. The applicant states that his father is a retired [professional] from government service. After his children were settled he spent time at the mosque and doing service for the community. His father was considered a learned person and the applicant and his siblings were employed and respected by the locals. They all have businesses around Karachi and in out stations. All of the applicant’s siblings are married and he is the only one who is unmarried and he lived with his parents and looked after them. When he completed his studies he worked under his brother in law in his [business] and in 2000 he began work on his own and registered a business called “[name]” in Karachi. His [brother] had the licence to import [goods] and materials from overseas and his brother in law assisted him to establish his business until he became experienced. When he began operating the business he became well known among the locals as a successful businessman. He visited the wholesale market known as the [name] where he purchased [goods] for his business. The applicant states that he had almost [number] employees and he travelled widely and came across many traders and businessmen.

9. The applicant was unmarried and had no responsibilities, other than the business, and he spent time at the mosque and at home. The applicant was expected to work with the Mullah to serve the community during religious festivals. The applicant was respected by the locals and many Muslims approached him for assistance as a result of the problems they had from local terrorist groups. The applicant asked the Mullah to intervene and to save the people from harassment by local terrorist groups. Due to the war on terror, the Taliban and Al-Qaeda militants had moved into Karachi and target shootings and random killings occurred. The people turned to the wealthy to protect their children and they approached the Mullah to protect the people. The applicant had been approaching police officers to protect people from the Taliban and he assisted in negotiations with the Taliban militants to secure the release of youth who had been taken away.
10. The applicant began to have problems when the Taliban started to introduce Sharia law and they became very strict with Pakistanis in adhering to Muslim culture and Islamic law. Because he was unmarried, the Taliban approached him and wanted him to work for them, to which he refused. They said that if he did not wish to work alongside them he could assist them to recruit local youths to be militarily trained to fight the United States. The applicant refused to interfere or have dealings with them and they began to demand money from him on a regular basis until he joined them. They told him that he should stop giving money to the mosque and the Mullah and to give money to them to oust the government. The militants started to visit him at home and as his parents were old they were ordered to keep silent. The TTP militants visited him frequently and asked him to engage in recruiting youths as there were many youths in the area who respected him. He was aware that these youths could join them if he advised them to do so. The applicant was against their proposals and paid them money to leave the premises.
11. Around the latter part of 2010, the TTP militants took him forcibly from his workplace and to an area on the Baluchistan-Karachi border where he met a few elderly Mullahs and Taliban leaders guarded by militants. They said that he holds a responsible status in the community and he would be a great help if he would work for them. They said he would be made [an official] for the TTP if he could join them because they needed business and educated people from his area who could encourage youths to join the fight for jihad. They said that because he is single he could travel around with them and work for them speaking to people about the atrocities committed by the United States troops. They said they would also help him to expand his business. The applicant was shocked at the proposal and declined by telling them that he had to look after his parents and his business. They proposed that they would import [goods] from the Middle East and if he agreed he would be required to give them half of the profits. The applicant told them he did not want to expand his business and he should be left alone. They told him it would be dangerous to cut ties and he should work

along with the Mullahs in his area and he should not speak to the authorities. When he returned home, he started to receive calls from unknown men telling him he had lost an opportunity to expand his business and he should pay them money. The applicant was worried about his business and he approached the Mullah. He was "astonished" to find that the Mullah was aware of the meeting and told him that he was ordered to watch him and inform the Taliban of any plans the applicant had to expand his business.

12. When the applicant told his siblings about the meeting he asked them to be discreet and not to approach anyone. His siblings told him he should study so he could expand his business on his own. The applicant decided to pursue studies in [Country 1] and in February 2011 he left [Country 1] to obtain a [qualification] and also to stay away from the Taliban militants who were roaming around his area watching him. The applicant then received a telephone call from his employees in Pakistan that the TTP had entered his business and inspected his records and he should return immediately. His brother tried to intervene and he was threatened to stay away and ordered to ensure that the applicant returned to Pakistan. The militants had copied his bank statements and the list of regular customers and had ordered his employees to let him know that he should report to the office in [name] Colony upon his return. When he arrived in Pakistan, he met the militants and they told him that he had left the country without telling them and he was wasting his time studying and he should join them in his business. The applicant gave up the idea of studying and returned to operate his business. Unfortunately, the TTP spread the rumour among his customers that he was working for them. He still managed to operate the business but the militants would visit him frequently and ask him about his progress and income. They tried to force him to join them as their partners so that his business could flourish. The applicant was aware that his business would run at a loss if he joined them so he told them he needed to think about it. They would telephone him every other month and ask him what he had decided. He told them that he had lost many customers because of their interference and that once the business picked up he would consider accommodating them. The militants stopped calling him at that time.
13. In November 2012, one of the employees from his [team], [Mr A] disappeared. The applicant approached the Karachi police and the Mullah. A few weeks later the militants arrived at his work place and told them that [Mr A] had joined them in Peshawar and was working for them. They gave him details as to where to find [Mr A] and he met him and [Mr A] told him that he was finding it difficult to continue to work for the Taliban because they assaulted him frequently. The applicant felt an obligation to [Mr A] and his family and he told the militants that [Mr A] should be permitted to work for him again. The militants told him that if [Mr A] was to return to Karachi, the applicant would have to work for them in Peshawar. He could not agree with them because of his parents and told them that he needed more time to arrange for someone to look after his business before he moved to Peshawar. The applicant then came to know that [Mr A] had been asked to sell drugs at their shop in the market and he planned to continue to do this from the applicant's business. [Mr A] was frightened of the police and pleaded with the applicant to assist him to leave the country. The applicant feared he could end up doing business with the Taliban if he joined them as his partners or moved to Peshawar. The applicant approached the Mullah for help but he was told that he had no choice but to move to Peshawar and comply with the militants' request. He said that the only way is to join the militants as his business partner and work according to their orders.
14. In March 2013, [Mr A]'s parents pleaded with the applicant to save [Mr A] from drug dealing. The police officers took details from the applicant and within two weeks he received a call from the militants threatening him with death for complaining to the police officers as to [Mr A]'s drug dealing. The applicant "fled to Australia" and whilst he was away he contacted his brother who told him that the militants had arrived at his workplace and questioned him as to the applicant's whereabouts. His brother told them that it was a false rumour and they believed him and left his workplace. The applicant's brother wanted him to return to Pakistan

because he was busy with his own work, and the militants were no longer threatening to kill him or come in search of him. When he arrived in Pakistan, they were aware of his arrival and wanted to talk to him again and were on their way to see him. The applicant immediately left Pakistan once again for fear of an assault. When the militants arrived and found that the applicant was not there they thought that they had been given wrong information and left saying that if he returned he should report to Peshawar.

15. The applicant stayed in Australia until November 2013 and returned to Pakistan after his brother told him that the militants thought that he would not return to Pakistan. The applicant spoke to the Mullah and told him that he would pay him and the Mosque to assist him to keep the militants away. The Mullah agreed and wanted him to keep the discussion secret. However, [in] December 2013 whilst he was at the business premises the police officers arrested him and detained him. The applicant realised that the police officers were working under the instructions of the militants. He begged the Police officers to contact the Mullah immediately and he pleaded with them that he would pay them good money if they could release him for a couple of days to see the Mullah and not to tell the militants that he had arrived. The applicant was told that the militants had already been told about his arrest and they were on their way. The applicant ordered his employee to take 20,000 *rupees* and give it to the police officer. The police officer then ordered the applicant to immediately leave the country and never mention that he had given them money. They said he would be shot by the TTP militants if they were found to have taken money to release him, He was told that he could be framed on false charges and sent to prison.
16. The applicant was lucky that he had obtained a multiple entry visa to Australia and as a result he was able to flee from Pakistan whenever he was in grave danger of being taken away by the militants. It is evident that the police and the Mullah are working together and are involved in illegal trade and money laundering. The applicant realised that he has no protection in Pakistan and he organised for his brother to operate his business in his absence. The applicant's brother is unable to take care of the business and the applicant has lost hope of running a business in Pakistan until the militants and police officers are brought to justice.
17. The applicant was interviewed by the delegate [in] October 2014. The applicant claimed during the interview that he was initially targeted because of his name which was considered to be Shia. He also claimed that he had deceived the Taliban on too many occasions and he had been imputed with a political opinion as opposing the Taliban.

#### **Application for review**

18. When lodging the application to the Tribunal, the applicant provided a copy of the delegate's decision record.
19. The applicant appeared before the Tribunal on 15 February 2016 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Urdu and English languages. At the Tribunal hearing provided a death certificate for his father, who died in January 2016.
20. During the hearing, the applicant was advised that the Tribunal is separate and independent from the Department and although the delegate had accepted his claims to have been sought by the Taliban, the Tribunal may reach a different conclusion in relation to these issues.

#### **ASSESSMENT OF CLAIMS AND EVIDENCE**

**Does the applicant have a well founded fear of persecution for a Convention reason if he returns to Pakistan?**

21. As stated above, the applicant has claimed that he fears harm from the Taliban who attempted to force him to recruit young men to join their organisation and to force him to allow them to join his business. The applicant has claimed, therefore, that he has an imputed political opinion as opposing the Taliban. He has also claimed that the police are assisting the Taliban and he fears that the police will arrest him and manufacture false charges against him. He has also claimed that he fears harm as a result of all of the other Convention grounds, which it has been submitted are "interchangeable". In considering these issues, the Tribunal has had regard to the applicant's written claims and oral evidence to both the Department and the Tribunal. The Tribunal has also had regard to the independent evidence provided by the applicant, as well as the independent evidence obtained through the Tribunal's own inquiries. The Tribunal has also had regard to the policy guidelines prepared by the Department of Immigration and the country information assessments prepared by the Department of Foreign Affairs and Trade.
22. Having considered all of the evidence, the Tribunal does not accept that the applicant is a credible witness. The Tribunal considers that the applicant's travel history, including to [Country 1] and Australia and his return to Pakistan on three occasions, each time for several weeks, does not support his claims to have feared harm from the Taliban, an extremist group known to engage in extreme violence against its opponents. The Tribunal also considers that the applicant's evidence as to the interest that he attracted from the Taliban and the reasons that they sought him to recruit youths was vague and unpersuasive. The Tribunal is drawn to the conclusion that the applicant has manufactured the entirety of his claims. The Tribunal does not accept that the applicant had any association or contact with the Taliban or that he was ever targeted to provide assistance or to engage in business with the Taliban. The Tribunal's consideration of the evidence and its reasons for reaching these conclusions follows.

*Delay and return to Pakistan on three occasions*

23. As stated above, the Tribunal firstly considers that the applicant's travel history is not indicative of a genuine fear of harm in Pakistan. The applicant has claimed that he first began receiving demands from the Taliban to recruit youth in mid 2010. This intensified and the applicant was again approached in late 2010 and told that he should expand his business with the Taliban as his business partner and taken "forcibly" from his workplace to the Baluchistan/Karachi border. To avoid this situation and to obtain a [qualification] he travelled to [Country 1] on a Student visa [in] February 2011 on a visa granted [in] January 2011. However, due to the fact that the Taliban was attempting to take over his business he returned to Pakistan in May 2011 after staying in [Country 1] for approximately three months. When he returned to Pakistan his visa for [Country 1] remained valid until February 2012, but although he continued to receive demands from the Taliban during that time, rather than returning to [Country 1] he instead chose to remain in Pakistan. The applicant then claims that in November 2012 his employee disappeared and was forced to sell drugs for the Taliban and some time after his disappearance the Taliban threatened the applicant with death after he complained to the police. The applicant claims that he "fled" to Australia on a [temporary] visa. However, his visa was in fact granted [in] April 2013 and the applicant entered Australia on the [temporary] visa [in] May 2013, some five weeks after the visa was granted. Again, although the applicant claims he had "fled" Pakistan for the safety of Australia because of his fear of harm from a violent extremist group threatening him with death, he remained in Australia only until [date] July 2013, some six weeks after his initial arrival in Australia at which time he returned to Pakistan, staying for some six weeks and returning to Australia [in] August 2013. Although the applicant returned to Australia because he found out that the militants were looking for him and had discovered that he was back in

Pakistan, he nevertheless decided to return to Pakistan again [in] November 2012 at which time he stayed in Pakistan for two months before returning to Australia [in] January 2012. The applicant claimed that he again fled Pakistan in January 2012 because he had been arrested by the police who were working in conjunction with the Mullah and the Taliban and told he should leave immediately or he would be framed and imprisoned with the militants. However, despite fleeing Pakistan for the third time for the safety of Australia in January 2014 he did not seek Australia's protection until [April] 2014, some four months after his return to Australia.

24. When asked by the delegate why he had returned to Pakistan from [Country 1] and Australia, the applicant stated that he did not want to stay away from Pakistan and his family and he has responsibilities in Pakistan to his family. When the Tribunal asked the applicant about these issues at the hearing, he confirmed that he left Pakistan for [Country 1] [in] February 2011. When asked why he did not leave earlier, given that his visa was issued [in] January 2011, the applicant stated that he had to try to resolve the situation and had to prepare his brother to operate his business in his absence. When asked why he returned to Pakistan some three months later, rather than remaining in [Country 1], the applicant stated that he had to deal with the business problems that had arisen because the Taliban had accessed his bank statements and business records, and wanted to work with him. When asked why he would not have returned to [Country 1] given that he had a valid visa until February 2012, the applicant stated that his brother had difficulty looking after the business and his brother's wife told him that he could not continue to be involved with the business. When asked why he would return to Pakistan from Australia between July to August 2013 if he had been threatened with death by the Taliban, and asked why he would remain in Pakistan for five weeks before returning to Australia, the applicant stated that he had been establishing his business for 10 years and he did not want it to fail. The applicant also thought that he could consult a senior police officer. When asked what happened during the time he was in Pakistan, the applicant stated that he received a call from [Mr A] telling him that the cleric had told him that he had returned. The applicant then returned to Australia immediately. When asked why he again took the chance of returning to Pakistan in November 2013 and stayed until January 2014, the applicant stated that his sister in law did not want her husband to be involved in the business so he had to return because he thought he could relocate the business. However, when he returned, his [brother] told him that he would not be able to do so because there are clerics and the Taliban everywhere and he will be unable to live safely in Pakistan.
25. When asked why he returned to Australia in January 2014, but then waited until April 2014 before applying for protection, even after he claims to have been arrested by the police and the militants were coming to see him and he feared being arrested on false charges, the applicant stated that he was hoping that the situation would resolve and there would be new government. The applicant then realised that the situation would stay the same and the police and government are working with the Taliban. The Tribunal advised the applicant that the independent evidence indicates that the Pakistani government has taken action against the Taliban and the Rangers and security presence has significantly reduced the crime rate and the number of terrorist incidents in Karachi. The applicant stated that the government did not prevent them from attacking the school in Peshawar and he is an "ordinary person". The applicant also stated that he has no-one who will help him in Pakistan; his family has turned against him because they blame him and his business is failed. His mother has told him that he should stay away. The applicant cannot obtain any assistance. He used to give to charity [but] he is now a "charity" and he has no place in Pakistan where he can live safely.
26. The Tribunal does not accept that the applicant's actions history of leaving and returning to Pakistan indicate that he has any genuine fear of harm in Pakistan. The Tribunal considers that his evidence instead indicates that he left [Country 1] to study and returned due to

business commitments. He also subsequently returned to Pakistan after purportedly fleeing for the safety of Australia on two occasions and although he again fled Pakistan for the safety of Australia in January 2014 he did not seek Australia's protection for a further four months. The Tribunal considers that had the Taliban wanted the applicant to assist him to recruit young men to their cause, abduct him and take him to the Baluchistan/Karachi border against his will and to avoid the Taliban who were "roaming around our area watching me", that he would not have returned to Pakistan after remaining in [Country 1] for only a few months. The Tribunal further considers that had the applicant again been told upon his return to Pakistan from [Country 1] that he should not have left the country without telling them and again told that he should allow them to join his business, that he would have returned to [Country 1] on the visa which was valid until February 2012. The Tribunal also considers that had the applicant's employee been forced to work with the militants, abused and threatened with abduction and the applicant later threatened with death by the Taliban, as a result of his reporting this to the police that he would have left Pakistan as soon as possible on the visa that was granted to him in April 2013, rather than waiting a further five weeks before he "fled" Pakistan for the safety of Australia in late May 2013. The Tribunal also does not accept that had this occurred that the applicant would then return to Pakistan some three months later in July 2013 and stay in Pakistan for five weeks. Nor does the Tribunal accept that had the applicant again left Pakistan in August 2013 because the Taliban had become aware of his presence in Karachi that he would have risked his safety at the hands of a violent extremist group by returning to Karachi. The Tribunal also does not accept that the applicant would again return to Karachi in November 2013, if he had been sought by the terrorists on the earlier trip. The Tribunal also does not accept that the applicant would, after being sought by terrorists since 2010, delay his application for protection until four months after his return to Australia.

27. The Tribunal accepts that the applicant was concerned about his business and his brother had difficulty operating it. However, the Tribunal does not accept that, had the incidents described by the applicant genuinely occurred, that he would delay leaving Pakistan on visas issued to enable him to do so, return to Pakistan from [Country 1] and Australia on three occasions and then delay his application for protection by some four months, even after having fled Pakistan on a further occasion. In the Tribunal's view, the evidence in relation to these issues is indicative of the fact that the applicant's claims to fear harm in Pakistan have been fabricated and the applicant returned to Pakistan from both [Country 1] and Australia for his business and has fabricated his claims around these trips.

*Credibility of the applicant's claims to have been required to recruit young men*

28. At the hearing, the applicant told the Tribunal that his mother [and siblings] reside in Karachi. The applicant also confirmed that he ran a [business] in Karachi. The applicant's [brother] operated it for about three months when the applicant came to Australia. The business has since ceased operating and his brother has returned to work as [occupation]. When asked about his contact with the Taliban, the applicant stated that they first approached him in mid-2010 when he was on his way to the Mosque. The applicant stated that at that time he had been made [an official] of the mosque due to his family's donations. When advised that this had not been included in his statement, the applicant stated that he thought he had told his representative about this. The applicant stated that his [role] was to collect donations and give them to the Mosque. When asked what he was asked to do by the Taliban when they first approached him, the applicant stated that they told him to bring boys to them, to start wearing traditional Muslim clothing and prepare the boys for jihad. When asked what he told the Taliban, the applicant stated that he told them that he could not do that. He later found out that they wanted the business as a front for drug dealing.
29. When asked again what happened when they first approached him, the applicant stated that they wanted him to prepare boys for jihad and to recruit boys. When asked how he was told

to do that, the applicant stated that they were saying he had contact with the young generation of boys and he could recruit them. The Tribunal commented that it is unclear how he could recruit the boys given his evidence that he was not ideologically supportive of the Taliban and had no previous involvement with them. The applicant stated that he used to help the boys at night by giving them dinner or if they had a "job problem" he would give them labouring jobs. When asked again what he was told to tell the boys in order to recruit them, the applicant stated that he was told to prepare their minds for jihad. In response to the Tribunal's comments that the independent evidence indicates that the Taliban mostly recruits from the Tribal areas and there is very little evidence of recruitment in the manner he has described, particularly from people who are opposed to the Taliban, the applicant referred to a boy in his neighbourhood who has been arrested due to his involvement with Daesh. The Tribunal also asked the applicant why they would select him to assist them, given that the Taliban is a banned group and his brother is [occupation]. The applicant stated that the police are frightened of them and it makes no difference that they are banned.

30. The applicant stated that in November 2010 they came to his workplace and forcefully took him to the border by car. They again told the applicant that he would have to participate in recruiting boys for jihad. When asked whether they offered him any particular position within the Taliban, the applicant stated that they did not. The applicant was reminded that in his statement they told him that he would be made [an official]. The applicant stated that he was told this at a later time that they wanted to make him [an official]. When advised again that the recruitment generally occurs from the madrassas and from tribal areas, and it is difficult to understand how they think he could recruit boys given his lack of understanding or interest in the Taliban ideology, the applicant stated that they wanted him to do business with them and they released him in November 2010 and he decided he should travel to [Country 1].
31. The Tribunal firstly considers, as discussed with the applicant during the hearing, that the independent evidence does not indicate that persons such as the applicant who have not been involved with the Taliban and do not support the Taliban or its principles, have been sought to recruit young men in Karachi. The independent evidence indicates that Karachi was at one time considered to be an attractive hideout for the Taliban and high profile Taliban operatives moved their base from the tribal areas to urban areas to avoid drone strikes, there are some reports indicating that in Karachi the Taliban distributed jihadist literature among college and university students in an effort to recruit them into militancy and also disseminated guidelines for making bombs and thwarting explosive detention equipment. However, the reports indicate that the majority of recruitment continues to be from the pool of uneducated poor in tribal areas and the Taliban also runs recruiting activities at religious madrassas which is the only schooling available to many underprivileged children. A report on Taliban and recruitment and fundraising in Karachi states that the madrassas in Karachi experienced "tremendous growth" in the 11 year rule of General Zia-ul-Haq and have trained and dispatched fighters to Afghanistan and Indian administered Kashmir. The report states that the Taliban groups manipulate deprived youth through jihadist literature and lectures into "believing that they can go from a state of dispossession to one of exaltation through jihad".<sup>1</sup>
32. In addition to the above, the Tribunal considers that the applicant's evidence in relation to the recruitment of young men from his area to join the Taliban at the hearing was vague and unpersuasive. Thus, although during the hearing the applicant was asked a number of times how he was intending to recruit youth to join the Taliban for jihad, the applicant was repeatedly only able to say that he was asked to recruit youth for jihad but was unable to say how he would be able to do this or what he was told by the Taliban in order to achieve the goal of recruiting youth to join the Taliban. The Tribunal does not accept that had the

<sup>1</sup> Ur Rehman, Zia 2012, 'Taliban Recruiting and Fundraising in Karachi, Combatting Terrorism at West, [www.ctc.usma.edu/posts](http://www.ctc.usma.edu/posts)., 24 July.

applicant been approached by the Taliban on several occasions, as claimed by the applicant, that he would have been given such vague instructions as to how he would go about recruiting such youth. The Tribunal does not accept that the applicant was speaking from personal experience when asked about this issue and instead considers that he was reciting a prepared set of claims and for that reason was unable to elaborate on those claims. Furthermore, the Tribunal considers it not credible that the Taliban would choose the applicant who did not agree with their ideology, had refused their requests and whose brother was a [occupation] who could potentially inform the authorities as to their presence, to be not credible. The Tribunal does not accept the applicant's explanation for why they would choose him to recruit young men for jihad and considers his evidence is vague, unpersuasive and not credible, and indicative of the fact that these claims have been manufactured.

33. In addition to the above, the Tribunal considers that had the applicant been made [an official] of the Mosque that this would have been included in his detailed statement provided to the Department. The applicant has claimed in his statement that he was responsible for collecting money for the mosque and told to stop giving money to the Mosque and the Mullah and instead give it to the Taliban, but did not mention that such a significant claim as being given the task of [official] of the Mosque. The Tribunal considers that this claim was manufactured in an attempt to embellish his claims that he was targeted by the Taliban and does not accept that he was [an official] of the Mosque. Furthermore, the applicant's evidence as to the position he was offered by the Taliban, as he claimed in his statement was inconsistent with his evidence at hearing which was that he was not offered any such position. The Tribunal does not accept the applicant's explanation for the inconsistencies in his evidence and indicates that this is further indicative of the fact that the applicant's claims have been fabricated.
34. Having considered all of the evidence, the Tribunal does not accept that the applicant has ever negotiated with the Mullah and the police to protect people from the Taliban militants in 2008 or at any time, or that he approached by the Taliban to assist them with recruitment or that they wanted him to join his business. Nor does the Tribunal accept he was forcibly taken to the Baluchistan/Karachi border or that he left Pakistan for [Country 1] and Australia because of his approaches and fear of harm from the Taliban. Nor does the Tribunal accept that the applicant's employer, [Mr A] went missing and was found to have joined the Taliban or that he was then found selling drugs for the Taliban through a legitimate business or that the applicant was later threatened with death by the Taliban and subsequently arrested and threatened by the police and allowed told he would be framed on false charges. Nor does the Tribunal accept that he was only allowed to leave after paying money to the police. The Tribunal is drawn to the conclusion that the applicant has fabricated the entirety of his claims regarding his contact with the Taliban and the police in Karachi. The Tribunal also does not accept the applicant's claims at the Department interview that he was targeted by the Taliban because his name was considered to be Shia. The Tribunal considers it would have been evident from the applicant's religious practise and his attendance at a Sunni mosque that he is a Sunni, not a Shia.
35. The Tribunal is not satisfied, having not accepted that the applicant has been targeted by the Taliban in the past or required to assist the Taliban in recruiting youth or forced to use his business for the Taliban's illegal purposes, the Tribunal is not satisfied that there is a real chance that this will occur if he returns to Pakistan in the reasonably foreseeable future. Nor is the Tribunal satisfied that there is a real chance that he will be considered to be Shia and harmed for that reason. Nor is the Tribunal satisfied that there is a real chance that the applicant will be arrested or charged by the police or any other security forces on false charges. Furthermore, although the applicant repeatedly claimed during the hearing that the Taliban and the police and security agencies are in cahoots with each other, the evidence discussed with the applicant during the hearing instead indicates that there has been a

significant crackdown on the Taliban in Karachi and in other parts of Pakistan. The Department of Foreign Affairs most recent report states that Pakistan continues to face security threats from terrorist, militant and sectarian groups. However, although militant groups maintain a presence in different parts of Pakistan, particularly Karachi, Quetta and parts of the Punjab, there has been a substantially reduced level of violence and since the commencement of the assertive counter-terrorist operation Zarb-e-Azb in June 2014 Pakistani military operations against terrorist and militant groups in the Federal Administered Tribal Areas (FATA) and Karachi have substantially reduced the level of generalised and sectarian violence throughout the country. The trend has increased over 2015 and credible sources have advised that militant groups such as the Taliban are divided and disrupted and Operation Zarb-e-Azb, which expanded to encompass paramilitary operations in Karachi, has substantially reduced the level of serious crime throughout Pakistan.<sup>2</sup>

36. The Tribunal accepts that the applicant's father died in January 2016, but does not accept his reasons for not returning to Pakistan. The Tribunal also accepts that the applicant's business has failed, but does not accept that this was due to extortion demands, threats of harm or because the Taliban wanted to be associated with his business and use it for drug trafficking and sales. The Tribunal considers that there are many reasons that a business can fail and is not satisfied that the applicant's business failure was connected to the Taliban. The Tribunal does not accept that the applicant will be unable to re-establish himself in Karachi upon his return, given that it is the place where he has lived all his life and previously managed to establish a business.
37. Accordingly, the Tribunal is not satisfied that there is a real chance that the applicant will be imputed with a political opinion as opposing the Taliban or that there is a real chance that he will suffer serious harm for this or any other Convention reason. The Tribunal finds, therefore, that the applicant does not have a well founded fear of persecution for a Convention reason.

**Are there substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan, there is a real risk that he will suffer significant harm?**

38. The Tribunal has also considered the applicant's claims, having regard to the Complementary Protection provisions. The Tribunal has not accepted any of the applicant's claims regarding his experiences in Pakistan at the hands of the Taliban or the police. For the same reasons as those set out above, the Tribunal does not accept that there is a real risk that the applicant will suffer significant harm upon his return to Pakistan. Accordingly, the Tribunal is not satisfied that there are substantial grounds for believing that as a necessary and foreseeable consequence of the applicant being removed from Australia to Pakistan that there is a real risk he will be subjected to torture; cruel or inhuman treatment or punishment, or degrading treatment or punishment or that he will be arbitrarily deprived of his life.

## CONCLUSIONS

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<sup>2</sup> Department of Foreign Affairs and Trade 2016, *Country Information Report: Pakistan*, 15 January, pp.6 to 7. See also Salahuddin, Z. 2016, "A Long Way to Go", *Friday Times*, 8 January which reports on the Taliban which is "reportedly beleaguered, in severe disarray and has had considerable difficulty finding any reliable footing in Pakistan".

39. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
40. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
41. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

**DECISION**

42. The Tribunal affirms the decision not to grant the applicant a Protection visa.

Susan Pinto  
Member

## ATTACHMENT - RELEVANT LAW

1. In accordance with section 65 of the *Migration Act 1958* (the Act), the Minister may only grant a visa if the Minister is satisfied that the criteria prescribed for that visa by the Act and the Migration Regulations 1994 (the Regulations) have been satisfied. The criteria for the grant of a Protection visa are set out in section 36 of the Act and Part 866 of Schedule 2 to the Regulations. Subsection 36(2) of the Act provides that:

'(2) A criterion for a protection visa is that the applicant for the visa is:

- (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol; or
- (aa) a non citizen in Australia (other than a non citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non citizen being removed from Australia to a receiving country, there is a real risk that the non citizen will suffer significant harm; or
- (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
  - (i) is mentioned in paragraph (a); and
  - (ii) holds a protection visa of the same class as that applied for by the applicant; or
- (c) a non citizen in Australia who is a member of the same family unit as a non citizen who:
  - (i) is mentioned in paragraph (aa); and
  - (ii) holds a protection visa of the same class as that applied for by the applicant.

### Refugee criterion

2. Subsection 5(1) of the Act defines the 'Refugees Convention' for the purposes of the Act as 'the Convention relating to the Status of Refugees done at Geneva on 28 July 1951' and the 'Refugees Protocol' as 'the Protocol relating to the Status of Refugees done at New York on 31 January 1967'. Australia is a party to the Convention and the Protocol and therefore generally speaking has protection obligations to persons defined as refugees for the purposes of those international instruments.

3. Article 1A(2) of the Convention as amended by the Protocol relevantly defines a 'refugee' as a person who:

'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.'

4. The definition contains four key elements. First, the applicant must be outside his or her country of nationality. Secondly, the applicant must fear 'persecution'. Subsection 91R(1) of the Act states that, in order to come within the definition in Article 1A(2), the persecution which a person fears must involve 'serious harm' to the person and 'systematic and discriminatory conduct'. Subsection 91R(2) states that 'serious harm' includes a reference to any of the following:
- (a) a threat to the person's life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person's capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.

#### **Complementary protection criterion**

5. An applicant for a protection visa who does not meet the refugee criterion in paragraph 36(2)(a) of the Act may nevertheless meet the complementary protection criterion in paragraph 36(2)(aa) of the Act, set out above. A person will suffer 'significant harm' if they will be arbitrarily deprived of their life, if the death penalty will be carried out on them or if they will be subjected to 'torture' or to 'cruel or inhuman treatment or punishment' or to 'degrading treatment or punishment'. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are further defined in subsection 5(1) of the Act.

#### **Ministerial direction**

In accordance with Ministerial Direction No. 56, made under section 499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration and Citizenship - 'PAM3: Refugee and humanitarian - Complementary Protection Guidelines' and 'PAM3: Refugee and humanitarian - Refugee Law Guidelines' - and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.